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From:

Sent: Friday, June 25, 2010 1:11:31 PM

To:

Cc:

Subject: RE: Rev. Proc. 2009-41

You first asked how you should process a request for relief if the taxpayer submits a request under Rev Proc 2009-41, but the request is filed more than 3 years and 75 days after the requested effective date for the entity classification election?

We would suggest that the Service Center simply grant relief for the date 3 years and 75 days prior to the filing date and that the Service Center send a generic letter indicating that the relief was limited to this date due to the late filing. (This would be consistent with 301.7701-3(c)(1)(iii)). The letter could also suggest that the taxpayer may still be able to receive the requested effective date by filing a private letter ruling request. The 60 month rule shouldn't be a problem if the PLR grants the relief because the taxpayer would just be receiving permission to have its intended classification effective earlier.

For example, if I filed today May 26th under the Rev Proc to make my intended entity classification election effective January 1, 2007 (date of formation), I would be past the 3 year 75 day limit. So the Service Center would make my election effective as of March 12, 2007. I could then request a PLR for January 1, 2007 through March 12, 2007 without being impacted by the 60 month rule, because once the Jan 1, 2007 effective date is granted via the PLR, the Service Center should treat me as if I made an initial classification on January 1, 2007, so I would still have my one free change available. If my January 1, 2007 election was a change in classification, the 60 months would run from that January 1, 2007 date.

Thanks